UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/633,358	08/04/2000	Christopher Andrew Barton	550-181	2002

7590 09/03/2003

Nixon & Vanderhye P C
8th Floor
1100 North Glebe Road
Arlington, VA 22201-4714

EXAMINER
VU, TUAN A

ART UNIT	PAPER NUMBER
2124	

DATE MAILED: 09/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/633,358	BARTON, CHRISTOPHER ANDREW	
	Examiner	Art Unit	
	Tuan A Vu	2124	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *6/16/2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-66* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-66* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *16 June 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1. This action is responsive to the Applicant's response filed June 16, 2003.

As indicated in Applicant's response, claims 14, 20, 36, and 58 have been amended. Claims 1-66 are pending in the office action.

Drawings

2. The corrected or substitute drawings were received on 6/16/2003. These drawings are accepted.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1, 3, 6, 8,10, 23, 25, 28, 30, 32, 38, 45, 50, 52, 54, and 60 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 4-7,11, 12, 15-17, 21, and 24-27 of copending Application No. 09/944,114(hereinafter '114). This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Although the conflicting claims are not identical, they are not patentably distinct from each other because they are method, article of manufacture, or system claims representing the

same invention and/or differ by features that would have been obvious to one of ordinary skill in the art.

The conflicting claims are mapped according to the following scheme.

Instant Claims	Copending '114 Claims
1	11
3,25	12,2
6,28,50	17,7,27
8,30,52	15,5,25
10,32,54	16,6,26
38,60	4,24
23	1
45	21

Following is a more specific description of the above conflicting claims.

The instant claim 1 recites the code operable for updating a computer file for use by a computer, such code for detecting whether a tag is indicative of existence of an upgraded version of a file to be used by a computer; and for triggering the download from a source provider of said updated version of said computer file for use by said computer.

Copending application '114 claim 11 also recites tag indicative of availability of an updated computer file and triggering the updating of a computer file for use by a computer; but does not recite tag detecting code and update triggering code.

One skill in the art would recognize the tag processing and triggering of the download of the upgrade file based on tag indication are the main purposes in upgrading system product as

recited in instant claim 1. It would be obvious for one of ordinary skill in the art to provide a computer code to the product of '114 claim because providing the code for tag detecting and for triggering the update are necessary for the computer product to put in effect what it is intended to provide.

As per instant claims 3, 25, respectively, '114 claims 12, 3, also recite that tag is part of an email message.

As per instant claims 6, 28, 50, respectively, '114 claims 17, 7, 27 also recite a received tag, such tag indicative of a version level of said computer file in use by said computer (p. 5)

As per instant claims 8, 30, 52, respectively, '114 claims 15, 5, 25 also recite that computer file is a virus definition file.

As per instant claims 10, 32, 54, respectively, '114 claims 16, 6, 26 also recite that computer file is an anti-virus computer program file.

As per instant claims 38, 60, respectively, '114 claims 4, 24 also recite that computer is connected to the providing source location via an Internet link, implying a remote location.

Response to Arguments

Double Patenting

5. Applicant's arguments filed 06/16/2003 about the double patenting rejection have been fully considered but they are not persuasive. The following are the reasons:

According to the following section MPEP § 804 II B 1 (a), i.e.

... Similarly, even if the application at issue is the earlier filed application, only a one-way determination of obviousness is needed to support a double patenting rejection in the

absence of a finding of: (A) administrative delay on the part of the Office causing delay in prosecution of the earlier filed application; and (B) applicant could not have filed the conflicting claims in a single (i.e., the earlier filed) application. See MPEP § 804, paragraph II.B.1.(b) below ...

and MPEP § 804, paragraph II.B.1.(b),

Unless the record clearly shows administrative delay by the Office and that applicant could not have avoided filing separate applications, the examiner may use the one-way obviousness determination and shift the burden to applicant to show why a two-way obviousness determination is required...

in the instant application, there is no evidence of administrative delay on the part of the office, nor is there any reason why applicant could not have filed the conflicting claims in a single application; hence, in the absence of (A) and (B) as noted above, the one-way test can still applies to support a double-patenting rejection. Therefore, since the instant application has been filed earlier than the potential conflicting application, i.e. #09/944,114, the rejection as applied is proper.

Further, from the response filed on 6/16/03, Applicant has not provided any reasons why the instant claims are not obvious over the claims of the copending application (#09/944,114) used in the previous double patenting rejection. Therefore, Examiner has no ground to withdraw such rejection as set forth herein.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 1-7, 12, 14-15, 17, 22-29, 34, 36-39, 44-51, 56, 58-61, and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng et al., USPN: 6,151,643 (hereinafter Cheng) , in view of Landsman et al., USPN: 6,516,338 (hereinafter Landsman).

As per claim 1, Cheng discloses a computer program (e.g. col. 6, lines 11-30) method for updating a computer file used by a computer, said computer program method comprising:

notification detecting code operable to detect within data received by said computer an indication of existence of an updated version of said computer file (e.g. col. 5, lines 18-32; Fig. 3-5 – Note: browser and communications protocol for network mail in advertisement data notifying are equivalent to code for detecting notification by mail, see Fig. 3-5); and

update triggering code to trigger downloading from a predetermined source to provide said updated version of said computer file for use by said computer (e.g. col. 4, line 61 to col. 5, line 17; *Install Update 501* – Fig. 5; Fig. 13a-e).

But Cheng does not specify that the updated version notification detection is operable upon detecting a tag nor does Cheng specify that the update triggering code is operable upon detection of said tag to effect the downloading of the updated version. However, Cheng discloses the advantage of automatic processes for update or download without user intervention (e.g. col. 4, lines 13-29; col. 24, lines 19-34); and use of automated Email to notify of such updated version (e.g. col. 20, lines 14-32; Fig. 3-5), hence suggests a code process to automate the retrieval of files and a particular indication (e.g. Email in browser environment) of latest file version analogous to tagging data for emphasis. It is noted that HTTP format in today's browser

pages like web mail messages enabling the use of tags to set up links or information of import is thereby implicitly suggested. Landsman, in a system to distribute advertised objects data for update to network users analogous to the distribution of computer files or advertisement data in Cheng's method, discloses the detection or reading of tags embedded in the user machine browser tag field, i.e. equivalent to tags as claimed, and subsequent tag-derived activation of a programs or scripts to automatically download and install of the latest ads version at the receiving station (e.g. *Advertising tag 40, loadad.js* - Fig. 10; *no user assist installation* - col. 17, lines 22 to col. 18, line 35). It would have been obvious for one of ordinary skill in the art at the time the invention was made to further implement the step of detecting of a version update as taught by Cheng above by adding the special field or tag and tag-detection automatic download/install code as suggested by Landsman to the mail notification by Cheng because using a special and browser embedded means as taught by Landsman to tag the versioned advertisement data as suggested by Cheng's method would enhance the implementation of such version detecting in effective way provided by browser technologies, thereby impart more ease, resources saving and speed in accessing, modifying and managing of data distributed among a large number of network recipients (Landsman: p. 9, lines 9-45), just to enhance the update intent as suggested by Cheng by means of automated script based on tag processing of client-directed notification.

As per claim 2, official notice is taken that use of header portion to embed important data describing network communications data destined for a recipient computer was a well-known concept at the time of the invention. In view of the teachings by Landsman in using tags and Email notification by Cheng as mentioned in claim 1, it would have been obvious for one of

ordinary skill in the art at the time the invention was made to set up the tagging or marking of notification or messages as suggested by Cheng so that such tagging is embedded in the header portion of such mail notification just as shown by Landsman and taught by known practice from above, because this would make it much easier to parse and detect significant data in a received information across the internet when the amount of data received could otherwise have required undue parsing resources.

As per claim 3, see teachings by Cheng in claim 1 for notification detection.

As per claim 4, see Cheng: col. 4, line 61 to col. 5, line 17.

As per claim 5, Cheng does not teach including version comparing and version checking code in tag. Cheng discloses code for comparing version and version determining on the client machine (e.g. Fig. 10; col. 11-12) while Landsman discloses tag embedded code operable to upgrade file version (e.g. Fig. 10-13). It would have been obvious for one of ordinary skill in the art at the time the invention was made to combine the version comparing and determining code as taught by Cheng to the tag embedded installation script as disclosed by Landsman because this would further enhance the automatic upgrading as intended by Cheng in that such combination would alleviate additional code extension by embedding both the version and target system checking in the installation code as taught by Landsman.

As per claim 6, Cheng further discloses profiling the user computer system for facilitating the update process via notification (e.g. col. 19, lines 50 to col. 20, line 14). In conjunction with such suggestion by Cheng as to providing information on the state of file version on the user computer, the insertion of tag code by Landsman and the version notification as taught by Cheng in claim 1 are used herein to address this claim. Thus, it have been obvious

for one of ordinary skill in the art at the time the invention was made to make code to provide tags as taught by Landsman to enhance the notification by Cheng by additionally indicate the version level of the file in the user system as suggested by Cheng for the same reasons as set forth in claim 1 and also for sparing additional system scanning resources when the knowledge of such version is made available in the notification by Cheng.

As per claim 7, the combined teachings of Cheng and Landsman teaches the inserting in data of tag indicative as to whether a version level of the computer file is currently used by the computer or newer than that version used by the computer (re claim 1 and 6); but does not specify not inserting a tag when said data already includes the tag. It would have been obvious for one of ordinary skill in the art at the time the invention was made to include in the code to insert tag as taught by the combination of Cheng and Landsman, the ability of not creating any tag when the received data already has the tag because this would save extraneous code resources in that the duplication of an already-performed process is obviated.

As per claim 12, Cheng only teaches activity log (e.g. col. 20, line 62 to col. 21, line 44) but Landsman discloses tag-derived supporting loader program with capabilities to display or cache previous ads displayed from previous download (e.g. col. 34, line 58 to col. 35, line 38; Fig. 13). It would have been obvious for one of ordinary skill in the art at the time the invention was made to implement the tag-derived installation code with operations history tracking ability as taught by Landsman to the activity logging code and notification (re claim 1) by Cheng, for this would inform on activities during the installation provided by the tag-triggered code as suggested by Cheng (and further enhanced by Landsman), because the more information about

operations sequences and status of the activation process the easier it is to address problems and effect timely recovery.

As per claims 14 and 15, Cheng discloses that (re claim 14) a predetermined source contains an updated version of said computer file and that (re claim 15) such source is remote from said computer (e.g. col. 4, line 61 to col. 5, line 17; Fig. 12).

As per claim 17, Cheng discloses encryption of data received from trusted sources (e.g. col. 6, lines 31-50) while Landsman teaches embedding of data and information in browser tags (re claim 1) for enabling the linking to sources to retrieve for downloading into the client machine. Official notice is taken that encrypting data traveling across a wide network area to provide more security was a well-known concept at the time of the invention. Thus, it would have been obvious for one of ordinary skill in the art at the time the invention was made to implement the retrieval of data in notification process as suggested by Cheng (and further enhanced by Landsman) the encryption (including decryption) of data as mentioned above in order to provide additional security control to the installation of data coming from the internet.

As per claim 22, Cheng discloses a computer program (e.g. col. 6, lines 11-30) comprising:

code to detect an indicator within data indicating a version level of a first computer file (e.g. col. 5, lines 18-32; Fig. 3-5; Fig 12 – Note: first computer being the server computer from which the URL are linked for retrieval of update files and indicator is in notification (e-mail) received by second computer using browser),

said indicator operable to trigger an update of an older version file in use by a second computer when said indicator data is received by the second computer (e.g. col. 4, line 61 to col. 5, line 17; *Install Update 501* – Fig. 5; Fig. 13a-e).

Cheng does not disclose inserting a tag in lieu of having an indicator within the data received by the second computer nor does Cheng disclose that the indicator to trigger the update is such tag. But these limitations have been addressed in claim 1 and 7 above using the teaching of Landsman, hence are rejected herein using the same rationale as above.

As per claim 23, this is the method claim of claim 1 above and is rejected using the same rejection set forth in claim 1 above, except for the limitation about a computer program product, which does not apply herein.

As per claims 24-29, these claims include similar limitations of claims 2-7 above, respectively; hence are rejected using the same corresponding rationales set forth therein.

As per claims 34, 36-39, these claims include similar limitations of claims 12, 14-17 above, respectively; hence are rejected using the same corresponding rationales set forth therein.

As per claim 44, this is the method claim of claim 22 above and is rejected using the same rejection set forth therein.

As per claim 45, this is the apparatus version of claim 23 above and is rejected using the same rejection set forth in claim 23 above.

As per claims 46-48, these claims include similar limitations of claims 2-4 above, respectively; hence are rejected using the same corresponding rationales set forth therein.

As per claims 49-51, in reference to claim 45, these claims include similar limitations of claims 5-7 above, respectively; hence are rejected using the same corresponding rationales set forth therein.

As per claims 56, and 58-61, these claims include similar limitations of claims 12, and 14-17 above, respectively; hence are rejected using the same corresponding rationales set forth therein.

As per claim 66, this claim is the apparatus version of claim 22 above; hence is rejected herein using the same corresponding rationale set forth therein.

8. Claims 8-11, 13, 16, 21, 30-33, 35, 43, 52-55, 57, and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng et al., USPN: 6,151,643, in view of Landsman et al., USPN: 6,516,338, as applied to claims 1, 11, 12, 23, 34, 45, 56 above, and further in view of Hodges et al., USPN: 6,053,423 (hereinafter Hodges).

As per claims 8, 9, and 10, the combined teachings of Cheng and Landsman teach about updating and downloading files but do not teach that such file is (re claim 8) is a virus definition file,(re claim 9) a virus detection program file,(re claim 10) a anti-virus computer program file. Official notice is taken that the update of virus file in the network dependent computer system was a well-known concept in the art at the time of the invention. Further, Hodges teaches a system to upgrade anti-virus applications (Figs. 1-12) including virus definition files (e.g. VIRUS-SIGSW95.DAT-- Fig. 11), anti-virus applications and detection files(e.g. col. 2, lines 22-32; antivirus_AppW95 – Fig. 11). In view of the well-known practices, it would have been obvious for one of ordinary skill in the art at the time the invention was made to include as type of computer files to update in Cheng's system (with the teachings of Landsman) the anti-virus

related computer files as claimed because this would provide well-known and asked-for security features to the communication and data importing scheme as disclosed by Cheng and Landsman within a computer network.

As per claim 11, the combined teachings of Cheng and Landsman do not explicitly disclose that the tag includes data indicative of a version level of a computer virus definition file, a virus detection engine program file, or an anti-virus program file. In view of the teachings of Hodges and the recognized well-known practices from above, combined with the tag teachings as set forth in claim 1 above, these limitations would have been obvious for one of ordinary skill in the art at the time the invention was made for the same reasons set forth in claims 1 and 8, 9, 10 above.

As per claim 13, Cheng discloses a client system scanning operation during the retrieving correct version of resident software (e.g. Fig. 8; col. 13-16); but does not specify that such tag parameters are providing indication of previous anti-virus scanning operations. However, by virtue of Hodges' teachings (re claims 8-11) and Cheng/Landsman's tag parameters indicating of previously performed operations(re claim 12) as mentioned above, it would have been obvious for one of ordinary skill in the art at the time the invention was made to implement tags as taught by Cheng/Landsman p so that it would indicate, by way of Hodges' teaching, about previously antivirus-related files operations performed just as it would indicate which previous file usage or loading had been saved in the catalog cached in the receiving computer of Cheng/Landsman's system(re claim 12) for the same benefits as mentioned in claims 8-11 above.

As per claim 16, with reference to claim 11, see claim 15 above for corresponding rationale for rejection.

As per claim 21, Cheng discloses including in the additional parameters needed in the computer environment for the component files installation as well as range of file versions and associated components (e.g. *selected Version Range* - Fig. 13b; Fig 13a-e); but does not specify not triggering an update if the tag indicates that the updated version is some pre-determined versions ahead of said computer file currently used by the computer. One of ordinary skill in the art would recognize from Cheng's above teachings that any version falling out of acceptable compatibility range with the current version used by the resident operating system would not trigger an update. Further, Hodges, in the system from claims 8-11 above, discloses the mapping of operating system and computer file version for upgrade analogous to the component/version scanning and verifying by Cheng (Cheng: Fig. 8-10), suggesting thereby that versions later than those compatible with a specific operating system setting will not trigger an update. Hence, using the above suggestions by Cheng (combined with the tag teachings of Landsman) and teachings by Hodges, it would have been obvious for one of ordinary skill in the art at the time the invention was made to implement code in Cheng 's method (with the tag teachings of Landsman) so that it would not trigger an update should a version detected by the tag indicates that such version is some numbers ahead of the current version (e.g. WIN 95) used by the computer, just as suggested by Hodges over the teachings of Cheng/Landsman. One of ordinary skill in the art would be motivated to do so because this would automate an update based on a predetermined settings thus alleviate data parsing time and mostly effort from additional (e.g. administrative) human intervention (Hodges: col. 4, lines 5-25).

As per claims 30-33 and 52-55, these claims include similar limitations of claims 8-11, respectively; hence are rejected using the same corresponding rationales set forth therein.

As per claims 35 and 57, see rejection of claim 13 above for corresponding rejection.

As per claims 43 and 65, these claims include limitations that have already been addressed in claim 21 above; hence are rejected herein with the same rationale as set forth in claim 21.

9. Claims 18-19, 40-41, and 62-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng et al., USPN: 6,151,643, in view of Landsman et al., USPN: 6,516,338, as applied to claims 1, 23, 45 above, and further in view of Cowan, USPN: 6,031,830 (hereinafter Cowan).

As per claims 18 and 19, Cheng (with Landsman's teachings) does not specify (re claim 18) waiting for an initial delay period following detection of said tag before downloading of said updated version computer file; and (re claim 19) if downloading of such file fails, then waiting for a failure delay before re-triggering a download of such updated version file, even though Landsman discloses a blocking until a full ads download is achieved (e.g. col. 35, line 50 to col. 36, line 21). Cowan, in a system to upgrade remote devices operating software, discloses receiving the available software within a predetermined time or otherwise retransmitting the request to retrieve software (Fig. 10; col. 15, lines 10-17). It would have been obvious for one of ordinary skill in the art at the time the invention was made to apply the waiting for an initial period prior to retrieving the software file, i.e. a failure period, before restarting, i.e. re-triggering, the request to download as taught by Cowan to the method of downloading components after detecting the tag in Cheng's system using Landsman's teachings because this

would alleviate the time for which a download request has to be allotted, while not disregarding any failure possibility, thus making the download/retrieval process as taught by Cheng (with Landsman's teachings) more time and resource efficient, like Cowan suggests in col. 2, lines 13-35.

As per claims 40 and 41, in reference to claim 23, these claims include similar limitations to claims 18 and 19 above, respectively; hence are rejected using the same corresponding rationale set forth therein.

As per claims 62 and 63, in reference to claim 45, these claims include similar limitations to claims 18 and 19 above, respectively; hence are rejected using the same corresponding rationale set forth therein.

10. Claims 20, 42, and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng et al., USPN: 6,151,643, in view of Landsman et al., USPN: 6,516,338, and Cowan, USPN: 6,031,830 as applied to claims 19, 41, 63 above, and further in view of Lambert et al., USPN: 6,038,601 (hereinafter Lambert).

As per claim 20, in reference to claim 19, the combination Cheng/Landsman/Cowan does not disclose that the failure delay period is a pseudo-random value determined by update triggering code. Lambert, in a system to distribute document data to a requesting client, discloses generating a random number to set the wait time prior to triggering the request to receive data (e.g. col. 27, lines 32-42). Thus, it would have been obvious for one of ordinary skill in the art at the time the invention was made to set a pseudo-randomized value as suggested by Lambert for the delay period as suggested by Cowan and apply it to the download/update process disclosed by Cheng (with Landsman's teachings) because this would minimize the risks

of overloading the receiving end buffering capability and better identify the source sender due to unreliability of the transmission protocol (Lambert: col. 27, col. 43-53) used in the network data downloading scheme disclosed by Cheng/Landsman.

As per claim 42, in reference to claim 41, this claim includes similar limitations to claim 20 above, respectively; hence is rejected using the same corresponding rationales set forth therein.

As per claim 64, in reference to claim 63, see claim 20 for rejection.

Conclusion

11. Applicant's arguments with respect to claims 1-66 have been considered but are moot in view of the new ground(s) of rejection.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat No. 5,933,645 to Wallack, disclosing notification message for update application event handling modules.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan A Vu whose telephone number is (703)305-7207. The examiner can normally be reached on 8AM-4:30PM/Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (703)305-9662.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 746-7239, (for formal communications intended for entry)

or: (703) 746-7240 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA. , 22202. 4th Floor(Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

VAT
August 18, 2003

Todd Ingberg
Primary Examiner
Group 2100